

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:)	Chapter 7
)	Bankruptcy No. 18-12360
MICHAEL KIDWELL,)	
)	
Debtor(s).)	
_____)	
BANKRUPTCY ESTATE OF)	Adversary No.
MICHAEL KIDWELL, by and through)	
Nancy L. James, Bankruptcy Trustee,)	
)	
Plaintiff,)	
)	
v.)	
)	COMPLAINT TO DETERMINE
LSF9 MASTER PARTICIPATION TRUST,)	EXTENT AND VALIDITY OF LIENS
through U.S. Bank Trust, N.A., as Trustee;)	
CALIBER HOME LOANS, INC., a Delaware)	
corporation; MORTGAGE MASTER)	
SERVICE CORPORATION, a Washington)	
corporation; and MORTGAGE ELECTRONIC)	
REGISTRATION SYSTEMS, INC., an)	
inactive Washington corporation,)	
)	
Defendants.)	
_____)	

COMES NOW the trustee, Nancy L. James (“the Plaintiff” or “the Trustee”), through counsel The Livesey Law Firm, and Rory C. Livesey, and states and alleges as follows:

I. PARTIES AND JURISDICTION

1. The Plaintiff is the duly qualified and acting trustee of the estate of the above-named debtor.

2. Defendant LSF9 Master Participation Trust is a Delaware corporation, and U.S. Bank Trust, N.A. is its trustee (“U.S. Bank”).

3. Defendant Caliber Home Loans, Inc. (“Caliber”) is a Delaware corporation that does business in the State of Washington.

4. Defendant Mortgage Master Service Corporation (“Mortgage Master”) is a Washington corporation.

5. Defendant Mortgage Electronic Registration Systems, Inc. (“MERS”) is an inactive Washington corporation.

6. This adversary proceeding is one arising in a Chapter 7 case of the named Debtor now pending in this court. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 151, 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (K) and (O).

7. Venue is proper under 28 U.S.C. § 1408.

II. FACTS

8. Michael Kidwell (hereinafter “the Debtor”) filed a Chapter 7 bankruptcy petition on June 14, 2018 and the Plaintiff herein was appointed Trustee. As prescribed by 11 U.S.C. § 541, among the assets of the Debtor’s bankruptcy estate was the real property located at 24514 - 148th Lane S.E., Kent, Washington 98042, legally described as:

That portion of the South 142 feet of the North 250 feet, as measured along the West line of the Southwest quarter of the Northwest quarter of Section 23, Township 22 North, Range 5 East, W.M., in King County, Washington, lying West of the Westerly right of way line of 148th Place Southeast (now known as 148th Lane Southeast);

Situate in the County of King, State of Washington,
 (“the Property”).

9. The Trustee sold the Property pursuant to court order dated April 4, 2019. The sale was free and clear of liens and encumbrances pursuant to 11 U.S.C. § 363(f). The sale of the

1 Property closed on April 17, 2019, and the Trustee is currently holding approximately \$338,000 in
2 sale proceeds.

3 10. Defendant U.S. Bank, as assignee, is the beneficiary of a deed of trust recorded
4 against the Property on May 22, 2007 in King County under Recording No. 20070522002719 in the
5 original amount of \$290,000, securing a promissory note executed by the Debtor on or about May
6 11, 2007.

7 11. Defendant Caliber is believed to be the servicer of the obligation for the benefit of
8 Defendant U.S. Bank.

9 12. Defendant MERS, solely as nominee for the benefit of Defendant Mortgage Master,
10 is the beneficiary of a deed of trust recorded against the Property on May 22, 2007, in King County
11 under Recording No. 20070522002720 in the original amount of \$135,000, securing a promissory
12 note executed by the Debtor on or about May 11, 2007.

13 13. The Debtor has previously filed a Chapter 7 petition on May 14, 2009 under Case No.
14 09-14655-SJS in the Western District of Washington at Seattle. The Debtor's personal liability was
15 discharged in that proceeding on August 19, 2009.

16 14. On information and belief, the Debtor has not made a payment on the debts secured
17 by either encumbrance since prior to the 2009 bankruptcy filing. Since that time, neither Defendant
18 U.S. Bank nor its servicer, Defendant Caliber, have made any effort to enforce the deed of trust
19 referenced in paragraph 10 above. Similarly, neither Defendant MERS nor Defendant Mortgage
20 Master have made any effort to enforce the deed of trust referenced in paragraph 12 above.

21 **III. FIRST CAUSE OF ACTION - 11 U.S.C. § 506(d)**

22 15. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
23 in paragraphs 1 through 14 above, inclusive as though fully set forth herein.

24 16. 11 U.S.C. § 506(d) provides "To the extent that a lien secures a claim against the
25 Debtor that is not an allowed secured claim, such lien is void."

1 17. Pursuant to RCW 4.16.040(1), an action upon a contract in writing is required to be
2 commenced within six years.

3 18. More than six years have elapsed since the Debtor's last payment on either obligation
4 secured by the deeds of trust and more than six years have elapsed since the discharge entered in the
5 Debtor's prior bankruptcy. The obligations secured by the deeds of trust are unenforceable *in rem*
6 against the Property and, therefore, the liens are void.

7 IV. SECOND CAUSE OF ACTION - 11 U.S.C. § 544

8 19. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
9 in paragraphs 1 through 18 above, inclusive as though fully set forth herein.

10 20. Pursuant to 11 U.S.C. § 544, Plaintiff has, as of the commencement of the case, the
11 power to avoid any obligation incurred by the Debtor that is voidable by a judicial lien creditor that
12 extends credit to the Debtor at the time of the commencement of the case.

13 21. For the reasons stated above, the obligations secured by the deeds of trust are
14 unenforceable *in rem* and, therefore, as a judgment lien creditor the Plaintiff can avoid the
15 defendants' interest in the Property and its sale proceeds.

16 WHEREFORE, the Plaintiff prays for a judgment as follows:

17 a) voiding the deed of trust filed on May 22, 2007 in King County under Recording No.
18 20070522002719 in favor of U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust
19 pursuant to 11 U.S.C. § 506(d);

20 b) voiding the deed of trust filed on May 22, 2007 in King County under Recording No.
21 20070522002720 in favor of Mortgage Electronic Registration Systems, Inc., solely as nominee for
22 the benefit of Defendant Mortgage Master Service Corporation, pursuant to 11 U.S.C. § 506(d);

23 c) in the alternative, avoiding the deed of trust filed on May 22, 2007 in King County
24 under Recording No. 20070522002719 in favor of U.S. Bank Trust, N.A., as Trustee for LSF9
25 Master Participation Trust pursuant to 11 U.S.C. § 544;

d) in the alternative, avoiding the deed of trust filed on May 22, 2007 in King County under Recording No. 20070522002720 in favor of Mortgage Electronic Registration Systems, Inc., solely as nominee for the benefit of Defendant Mortgage Master Service Corporation, pursuant to 11 U.S.C. § 544;

e) for a finding by the court that the transfers voided or avoided herein are preserved for the benefit of the estate pursuant to 11 U.S.C. § 551;

f) for recovery of attorney fees and costs, to the extent recoverable under applicable law, including statutory, contract or equitable, and the evidence submitted to the court; and

g) for such further and equitable relief as the court deems just in the premises.

RESPECTFULLY SUBMITTED this 24th day of February, 2020.

THE LIVESEY LAW FIRM

/S/ Rory C. Livesey

Rory C. Livesey, WSBA #17601
Attorney for Plaintiff/Trustee